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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,126	03/30/2001	Hassan A. Serhan	DEP0546	8872

7590

04/18/2005

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EXAMINER

MANAHAN, TODD E

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/822,126

Applicant(s)

SERHAN ET AL.

Examiner

Todd E. Manahan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12, 19-23, 25-28, 30, 36-48, 58-65 and 67-79 is/are pending in the application.
- 4a) Of the above claim(s) 2-4, 19-23, 25-28, 40-48, 58-65 and 73-79 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5-12, 30, 36-39 and 67-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/25/03, 3/22/04, 5-18-04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The indicated allowability of claims 1-12, 19-23, 25-28, 30, 36-48, 58-65, 67-79 is withdrawn in view of the newly discovered reference(s) to Yuan et al., Mansat, and Trieu et al. Rejections based on the newly cited reference(s) follow.

#### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention: subspecies is required:

Species I: figure 2a (claims 1, 2, 5-12, 17, 18, 24, 29, 30, 36-48, 58-63, 67-72);

Species II: figure 2c (claims 1-12, 17, 19-23, 25-28, 30, 40-48, 58-63, 67-76);

Species III: figures 3a-3d (claims 1, 2, 5-12, 1, 30, 36-38, 40-48, 58-62, 65);

Species IV: Figures 4a-4c (claims 17, 40-48, 58-62, 73-76);

Species V: the combination wherein the fasteners have a ceramic attachment end and a polymer shank (claim 64);

Species VI: combination wherein one fastener is shouldered and the other is shoulderless (claim 77).

Each of the above species also includes the following distinct subspecies:

Subspecies A: ligament having a conformable portion;

Subspecies B: ligament having a bioresorbable;

Subspecies C: ligament and fasteners both bioresorbable;

Subspecies D: ligament wherein the central portion has a first resorption time and the end portions have a second longer resorption time.

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims appear to be generic to all species and subspecies.

Applicant's election without traverse of Group I, Species I, Subspecies A in Paper No. 6 is acknowledged. Claims 1, 5-12, 30, 36-39, and 67-72 read on this embodiment.

Claims 2-4, 19-23, 25-28, 40-48, 58-65, 73-79 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6 filed 03 February 2003.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5-12, 30, 36-39, 67-72 are rejected under 35 U.S.C. 102(e) as being anticipated by Trieu et al. (United States Patent Publication No. 2002/0120270).

Trieu et al. disclose an intervertebral connection system comprising a ligament and first and second bone fasteners. The ligament is made of a braided fabric and includes a central portion, first and second end portions and first and second conformable portions disposed

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between the end portions and the central portion. The fasteners may be shoulderless and may be integrally preconnected to the ligament.

Claims 1, 5-12, 30, 36-39, 67-72 are rejected under 35 U.S.C. 102(b) as being anticipated by Mansat (United States Patent No. 4,728,329).

Mansat discloses a connection system comprising a ligament and first and second bone fasteners. The ligament is made of a braided fabric and includes a central portion, first and second end portions and first and second conformable portions disposed between the end portions and the central portion. The fasteners may be shoulderless (see figure 3).

Claims 1, 5, 7-9, 11, 12, 30, 36-39, 67-69, 71, 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Yuan et al. (United States Patent No. 5,681,310).

Yuan et al. disclose an intervetebral connection system comprising a ligament and first and second bone fasteners. The ligament is made of a fabric and includes a central portion, first and second end portions and first and second conformable portions disposed between the end portions and the central portion. The fasteners may be shoulderless (see figure 5).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is 571 272- 4713. The examiner can normally be reached on Mon-Fri.

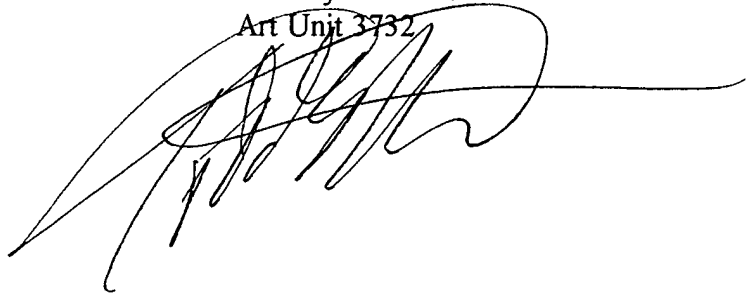
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571 273-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Todd E. Manahan  
Primary Examiner  
Art Unit 3732

T.E. Manahan  
5 April 2005

A handwritten signature in black ink, appearing to read 'T.E. Manahan', is written over the printed name and title. The signature is stylized with a large, sweeping loop at the end.